

pheric Administration to create and maintain the database required under this section.

**(f) Public availability**

The Under Secretary shall make the information collected and maintained under this section available to the public.

(Pub. L. 106-457, title I, §107, Nov. 7, 2000, 114 Stat. 1964.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2903, 2904, 2907 of this title.

**§ 2907. Reporting**

**(a) In general**

At the end of the third and fifth fiscal years following November 7, 2000, the Secretary, after considering the advice and recommendations of the Council, shall transmit to Congress a report on the results of activities carried out under this chapter.

**(b) Contents of report**

A report under subsection (a) of this section shall include—

- (1) data on the number of acres of estuary habitat restored under this chapter, including descriptions of, and partners involved with, projects selected, in progress, and completed under this chapter that comprise those acres;
- (2) information from the database established under section 2906(b) of this title related to ongoing monitoring of projects to ensure that short-term and long-term restoration goals are achieved;
- (3) an estimate of the long-term success of varying restoration techniques used in carrying out estuary habitat restoration projects;
- (4) a review of how the information described in paragraphs (1) through (3) has been incorporated in the selection and implementation of estuary habitat restoration projects;
- (5) a review of efforts made to maintain an appropriate database of restoration projects carried out under this chapter; and
- (6) a review of the measures taken to provide the information described in paragraphs (1) through (3) to persons with responsibility for assisting in the restoration of estuary habitat.

(Pub. L. 106-457, title I, §108, Nov. 7, 2000, 114 Stat. 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2904 of this title.

**§ 2908. Funding**

**(a) Authorization of appropriations**

**(1) Estuary habitat restoration projects**

There is authorized to be appropriated to the Secretary for carrying out and providing technical assistance for estuary habitat restoration projects—

- (A) \$40,000,000 for fiscal year 2001;
- (B) \$50,000,000 for each of fiscal years 2002 and 2003;
- (C) \$60,000,000 for fiscal year 2004; and
- (D) \$75,000,000 for fiscal year 2005.

Such sums shall remain available until expended.

**(2) Monitoring**

There is authorized to be appropriated to the Under Secretary for Oceans and Atmosphere of the Department of Commerce for the acquisition, maintenance, and management of monitoring data on restoration projects carried out under this chapter, \$1,500,000 for each of fiscal years 2001 through 2005. Such sums shall remain available until expended.

**(b) Set-aside for administrative expenses of the Council**

Not to exceed 3 percent of the amounts appropriated for a fiscal year under subsection (a)(1) of this section or \$1,500,000, whichever is greater, may be used by the Secretary for administration and operation of the Council.

(Pub. L. 106-457, title I, §109, Nov. 7, 2000, 114 Stat. 1965.)

**§ 2909. General provisions**

**(a) Agency consultation and coordination**

In carrying out this chapter, the Secretary shall, as necessary, consult with, cooperate with, and coordinate its activities with the activities of other Federal departments and agencies.

**(b) Cooperative agreements; memoranda of understanding**

In carrying out this chapter, the Secretary may—

- (1) enter into cooperative agreements with Federal, State, and local government agencies and other entities; and
- (2) execute such memoranda of understanding as are necessary to reflect the agreements.

**(c) Federal agency facilities and personnel**

Federal agencies may cooperate in carrying out scientific and other programs necessary to carry out this chapter, and may provide facilities and personnel, for the purpose of assisting the Council in carrying out its duties under this chapter.

**(d) Identification and mapping of dredged material disposal sites**

In consultation with appropriate Federal and non-Federal public entities, the Secretary shall undertake, and update as warranted by changed conditions, surveys to identify and map sites appropriate for beneficial uses of dredged material for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in order to further the purposes of this chapter.

**(e) Study of bioremediation technology**

**(1) In general**

Not later than 180 days after November 7, 2000, the Administrator of the Environmental Protection Agency, with the participation of the estuarine scientific community, shall begin a 2-year study on the efficacy of bioremediation products.

**(2) Requirements**

The study shall—

- (A) evaluate and assess bioremediation technology—

- (i) on low-level petroleum hydrocarbon contamination from recreational boat bilges;
  - (ii) on low-level petroleum hydrocarbon contamination from stormwater discharges;
  - (iii) on nonpoint petroleum hydrocarbon discharges; and
  - (iv) as a first response tool for petroleum hydrocarbon spills; and
- (B) recommend management actions to optimize the return of a healthy and balanced ecosystem and make improvements in the quality and character of estuarine waters.
- (Pub. L. 106-457, title I, §110, Nov. 7, 2000, 114 Stat. 1966.)

## CHAPTER 43—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS

### SUBCHAPTER I—GENERAL PROVISIONS

- |               |   |
|---------------|---|
| Sec.<br>3001. | Commissioned officer corps.   |
| 3002.         | Definitions. <ul style="list-style-type: none"> <li>(a) Applicability of definitions in title 10.</li> <li>(b) Additional definitions.</li> </ul>   |
| 3003.         | Authorized number on the active list. <ul style="list-style-type: none"> <li>(a) Annual strength on active list.</li> <li>(b) Lineal list.</li> </ul>   |
| 3004.         | Strength and distribution in grade. <ul style="list-style-type: none"> <li>(a) Relative rank; proportion.</li> <li>(b) Computation of number in grade.</li> <li>(c) Preservation of grade and pay, etc.</li> <li>(d) Filling of vacancies; additional numbers.</li> <li>(e) Temporary increase in numbers.</li> </ul> |
| 3005.         | Authorized number for fiscal years 2003 through 2005.   |

### SUBCHAPTER II—APPOINTMENT AND PROMOTION OF OFFICERS

- |       |  |
|-------|--|
| 3021. | Original appointments. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Lineal list.</li> <li>(c) Service credit upon original appointment in grade above ensign.</li> </ul>  |
| 3022. | Personnel boards. <ul style="list-style-type: none"> <li>(a) Convening.</li> <li>(b) Duties.</li> <li>(c) Action on recommendations not acceptable.</li> </ul>   |
| 3023. | Promotion of ensigns to grade of lieutenant (junior grade). <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Separation of ensigns found not fully qualified.</li> </ul>  |
| 3024. | Promotion by selection to permanent grades above lieutenant (junior grade).  |
| 3025. | Length of service for promotion purposes. <ul style="list-style-type: none"> <li>(a) General rule.</li> <li>(b) Exception.</li> </ul>  |
| 3026. | Appointments and promotions to permanent grades.   |
| 3027. | General qualification of officers for promotion to higher permanent grade.   |
| 3028. | Positions of importance and responsibility. <ul style="list-style-type: none"> <li>(a) Designation of positions.</li> <li>(b) Assignment of officers to designated positions.</li> <li>(c) Director of NOAA Corps and Office of Marine and Aviation Operations.</li> <li>(d) Grade.</li> <li>(e) Number of officers appointed.</li> <li>(f) Pay and allowances.</li> <li>(g) Effect of appointment.</li> </ul> |

- |               |   |
|---------------|---|
| Sec.<br>3029. | Temporary appointments and promotions generally. <ul style="list-style-type: none"> <li>(a) Ensign.</li> <li>(b) Lieutenant (junior grade).</li> <li>(c) Any one grade.</li> </ul>              |
| 3030.         | Temporary appointment or advancement of commissioned officers in time of war or national emergency. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Limitations.</li> </ul> |
| 3031.         | Pay and allowances; date of acceptance of promotion. <ul style="list-style-type: none"> <li>(a) Acceptance and date of promotion.</li> <li>(b) Oath of office.</li> </ul>                       |
| 3032.         | Service credit as deck officer or junior engineer for promotion purposes.   |
| 3033.         | Suspension during war or emergency.   |
- SUBCHAPTER III—SEPARATION AND RETIREMENT OF OFFICERS
- |       |  |
|-------|--|
| 3041. | Involuntary retirement or separation. <ul style="list-style-type: none"> <li>(a) Transfer of officers to retired list; separation from service.</li> <li>(b) Computations.</li> <li>(c) Effective date of retirements and separations.</li> </ul>  |
| 3042. | Separation pay. <ul style="list-style-type: none"> <li>(a) Authorization of payment.</li> <li>(b) Amount of separation pay.</li> <li>(c) Other conditions, requirements, and administrative provisions.</li> </ul>   |
| 3043. | Mandatory retirement for age. <ul style="list-style-type: none"> <li>(a) Officers below grade of rear admiral (lower half).</li> <li>(b) Flag officers.</li> </ul>   |
| 3044. | Retirement for length of service.  |
| 3045. | Computation of retired pay. <ul style="list-style-type: none"> <li>(a) Officers first becoming members before September 8, 1980.</li> <li>(b) Officers first becoming members on or after September 8, 1980.</li> <li>(c) Treatment of full and fractional parts of months in computing years of service.</li> </ul> |
| 3046. | Retired grade and retired pay.   |
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| 3048. | Continuation on active duty; deferral of retirement.   |
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### SUBCHAPTER IV—SERVICE OF OFFICERS WITH THE MILITARY DEPARTMENTS

- |       |   |
|-------|---|
| 3061. | Cooperation with and transfer to military departments. <ul style="list-style-type: none"> <li>(a) Transfers of resources and officers during national emergency.</li> <li>(b) Limitation on transfer of officers.</li> <li>(c) Status of transferred officers.</li> </ul> |
| 3062. | Relative rank of officers when serving with Army, Navy, or Air Force.   |
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### SUBCHAPTER V—RIGHTS AND BENEFITS

- |       |   |
|-------|---|
| 3071. | Applicability of certain provisions of title 10. <ul style="list-style-type: none"> <li>(a) Provisions made applicable to the corps.</li> <li>(b) References.</li> </ul>  |
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| 3073. | Medical and dental care.  |
| 3074. | Commissary privileges.  |

Sec.

- (a) Extension of privilege.
- (b) Sales of rations, stores, uniforms, and related equipment.
- (c) Surviving spouses' rights.
- 3075. Authority to use appropriated funds for transportation and reimbursement of certain items.
  - (a) Transportation of effects of deceased officers.
  - (b) Reimbursement for supplies furnished by officers to distressed and shipwrecked persons.
- 3076. Presentation of United States flag upon retirement.
  - (a) Presentation of flag upon retirement.
  - (b) Multiple presentations not authorized.
  - (c) No cost to recipient.

## SUBCHAPTER I—GENERAL PROVISIONS

## § 3001. Commissioned officer corps

There shall be in the National Oceanic and Atmospheric Administration a commissioned officer corps.

(Pub. L. 107-372, title II, §211, Dec. 19, 2002, 116 Stat. 3082.)

## SHORT TITLE

Pub. L. 107-372, title II, §201, Dec. 19, 2002, 116 Stat. 3082, provided that: "This title [enacting this chapter, amending section 1406 of Title 10, Armed Services, and section 2396 of Title 22, Foreign Relations and Intercourse, repealing sections 853a to 853l, 853o, 853p to 853r, 853t to 854, 855, 856 to 857-5, 858, 864, and 874 of this title, amending provisions set out as a note under section 1293 of Title 10, and repealing provisions set out as notes under sections 853a and 857-1 of this title and section 101 of Title 38, Veterans' Benefits] may be cited as the 'National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002'."

## § 3002. Definitions

## (a) Applicability of definitions in title 10

Except as provided in subsection (b) of this section, the definitions provided in section 101 of title 10 apply to the provisions of this chapter.

## (b) Additional definitions

In this chapter:

## (1) Active duty

The term "active duty" means full-time duty in the active service of a uniformed service.

## (2) Grade

The term "grade" means a step or degree, in a graduated scale of office or rank, that is established and designated as a grade by law or regulation.

## (3) Officer

The term "officer" means an officer of the commissioned corps.

## (4) Flag officer

The term "flag officer" means an officer serving in, or having the grade of, vice admiral, rear admiral, or rear admiral (lower half).

## (5) Secretary

The term "Secretary" means the Secretary of Commerce.

## (6) Administration

The term "Administration" means the National Oceanic and Atmospheric Administration.

(Pub. L. 107-372, title II, §212, Dec. 19, 2002, 116 Stat. 3082.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 107-372, Dec. 19, 2002, 116 Stat. 3082, which is classified principally to this chapter. For complete classification of this title to the Code, see Short Title note set out under section 3001 of this title and Tables.

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 857-1 of this title prior to repeal by Pub. L. 107-372.

## § 3003. Authorized number on the active list

## (a) Annual strength on active list

The annual strength of the commissioned corps in officers on the lineal list of active duty officers of the corps shall be prescribed by law.

## (b) Lineal list

The Secretary shall maintain a list, known as the "lineal list", of officers on active duty. Officers shall be carried on the lineal list by grade and, within grade, by seniority in grade.

(Pub. L. 107-372, title II, §213, Dec. 19, 2002, 116 Stat. 3083.)

## § 3004. Strength and distribution in grade

## (a) Relative rank; proportion

Of the total authorized number of officers on the lineal list of the commissioned corps, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in proportions as follows:

- (1) 8 in the grade of captain.
- (2) 14 in the grade of commander.
- (3) 19 in the grade of lieutenant commander.
- (4) 23 in the grade of lieutenant.
- (5) 18 in the grade of lieutenant (junior grade).
- (6) 18 in the grade of ensign.

## (b) Computation of number in grade

## (1) In general

Subject to paragraph (2), whenever a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken, and if the fraction is one-half the next higher whole number shall be taken.

## (2) Limitation on increase in total number

The total number of officers on the lineal list authorized by law may not be increased as the result of the computations prescribed in this section, and if necessary the number of officers in the lowest grade shall be reduced accordingly.

## (c) Preservation of grade and pay, etc.

No officer may be reduced in grade or pay or separated from the commissioned corps as the result of a computation made to determine the

authorized number of officers in the various grades.

**(d) Filling of vacancies; additional numbers**

Nothing in this section may be construed as requiring the filling of any vacancy or as prohibiting additional numbers in any grade to compensate for vacancies existing in higher grades.

**(e) Temporary increase in numbers**

The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded so long as the average number on that list during that fiscal year does not exceed the authorized number.

(Pub. L. 107-372, title II, §214, Dec. 19, 2002, 116 Stat. 3083.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853a of this title prior to repeal by Pub. L. 107-372.

**§ 3005. Authorized number for fiscal years 2003 through 2005**

There are authorized to be on the lineal list of the commissioned corps of the National Oceanic and Atmospheric Administration—

- (1) 270 officers for fiscal year 2003;
- (2) 285 officers for fiscal year 2004; and
- (3) 299 officers for fiscal year 2005.

(Pub. L. 107-372, title II, §215, Dec. 19, 2002, 116 Stat. 3084.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853a of this title prior to repeal by Pub. L. 107-372.

SUBCHAPTER II—APPOINTMENT AND PROMOTION OF OFFICERS

**§ 3021. Original appointments**

**(a) In general**

**(1) Grades**

Original appointments may be made in the grades of ensign, lieutenant (junior grade), and lieutenant.

**(2) Qualifications**

Under regulations prescribed by the Secretary, such an appointment may be given only to a person who—

- (A) meets the qualification requirements specified in paragraphs (1) through (4) of section 532(a) of title 10; and
- (B) has such other special qualifications as the Secretary may prescribe by regulation.

**(3) Examination**

A person may be given such an appointment only after passage of a mental and physical examination given in accordance with regulations prescribed by the Secretary.

**(4) Revocation of commission of officers found not qualified**

The President may revoke the commission of any officer appointed under this section during the officer's first three years of service if the officer is found not qualified for the

service. Any such revocation shall be made under regulations prescribed by the President.

**(b) Lineal list**

Each person appointed under this section shall be placed on the lineal list in a position commensurate with that person's age, education, and experience, in accordance with regulations prescribed by the Secretary.

**(c) Service credit upon original appointment in grade above ensign**

**(1) In general**

For the purposes of basic pay, a person appointed under this section in the grade of lieutenant shall be credited as having, on the date of that appointment, three years of service, and a person appointed under this section in the grade of lieutenant (junior grade) shall be credited as having, as of the date of that appointment, 1½ years of service.

**(2) Higher credit under other law**

If a person appointed under this section is entitled to credit for the purpose of basic pay under any other provision of law that would exceed the amount of credit authorized by paragraph (1), that person shall be credited with that amount of service in lieu of the credit authorized by paragraph (1).

(Pub. L. 107-372, title II, §221, Dec. 19, 2002, 116 Stat. 3084.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853t of this title prior to repeal by Pub. L. 107-372.

**§ 3022. Personnel boards**

**(a) Convening**

At least once a year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board. A personnel board shall consist of not less than five officers on the lineal list in the permanent grade of commander or above.

**(b) Duties**

Each personnel board shall—

- (1) recommend to the Secretary such changes in the lineal list as the board may determine; and
- (2) make selections and recommendations to the Secretary and President for the appointment, promotion, separation, continuation, and retirement of officers as prescribed in this subchapter and subchapter III of this chapter.

**(c) Action on recommendations not acceptable**

In a case in which any recommendation by a board convened under subsection (a) of this section is not accepted by the Secretary or the President, the board shall make such further recommendations as are acceptable.

(Pub. L. 107-372, title II, §222, Dec. 19, 2002, 116 Stat. 3085.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853r of this title prior to repeal by Pub. L. 107-372.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3041 of this title.

**§ 3023. Promotion of ensigns to grade of lieutenant (junior grade)**

**(a) In general**

An officer in the permanent grade of ensign shall be promoted to and appointed in the grade of lieutenant (junior grade) upon completion of three years of service. The authorized number of officers in the grade of lieutenant (junior grade) shall be temporarily increased as necessary to authorize such appointment.

**(b) Separation of ensigns found not fully qualified**

If an officer in the permanent grade of ensign is at any time found not fully qualified, the officer's commission shall be revoked and the officer shall be separated from the commissioned service.

(Pub. L. 107-372, title II, § 223, Dec. 19, 2002, 116 Stat. 3085.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853e of this title prior to repeal by Pub. L. 107-372.

**§ 3024. Promotion by selection to permanent grades above lieutenant (junior grade)**

Promotion to fill vacancies in each permanent grade above the grade of lieutenant (junior grade) shall be made by selection from the next lower grade upon recommendation of the personnel board.

(Pub. L. 107-372, title II, § 224, Dec. 19, 2002, 116 Stat. 3085.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853b of this title prior to repeal by Pub. L. 107-372.

**§ 3025. Length of service for promotion purposes**

**(a) General rule**

Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any other officer below that officer on the lineal list.

**(b) Exception**

Notwithstanding subsection (a) of this section, an officer who has lost numbers shall be assumed to have, for promotion purposes, no greater service than the officer next above such officer in such officer's new position on the lineal list.

(Pub. L. 107-372, title II, § 225, Dec. 19, 2002, 116 Stat. 3085.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853f of this title prior to repeal by Pub. L. 107-372.

**§ 3026. Appointments and promotions to permanent grades**

Appointments in and promotions to all permanent grades shall be made by the President, by and with the advice and consent of the Senate.

(Pub. L. 107-372, title II, § 226, Dec. 19, 2002, 116 Stat. 3085.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853i(a) of this title prior to repeal by Pub. L. 107-372.

**§ 3027. General qualification of officers for promotion to higher permanent grade**

No officer may be promoted to a higher permanent grade on the active list until the officer has passed a satisfactory mental and physical examination in accordance with regulations prescribed by the Secretary.

(Pub. L. 107-372, title II, § 227, Dec. 19, 2002, 116 Stat. 3085.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 854 of this title prior to repeal by Pub. L. 107-372.

**§ 3028. Positions of importance and responsibility**

**(a) Designation of positions**

The Secretary may designate positions in the Administration as being positions of importance and responsibility for which it is appropriate that officers of the Administration, if serving in those positions, serve in the grade of vice admiral, rear admiral, or rear admiral (lower half), as designated by the Secretary for each position.

**(b) Assignment of officers to designated positions**

The Secretary may assign officers to positions designated under subsection (a) of this section.

**(c) Director of NOAA Corps and Office of Marine and Aviation Operations**

The Secretary shall designate one position under this section as responsible for oversight of the vessel and aircraft fleets and for the administration of the commissioned officer corps. That position shall be filled by an officer on the lineal list serving in or above the grade of rear admiral (lower half). For the specific purpose of administering the commissioned officer corps, that position shall carry the title of Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps. For the specific purpose of administering the vessel and aircraft fleets, that position shall carry the title of Director of the Office of Marine and Aviation Operations.

**(d) Grade**

**(1) Temporary appointment to grade designated for position**

An officer assigned to a position under this section while so serving has the grade designated for that position, if appointed to that grade by the President, by and with the advice and consent of the Senate.

**(2) Reversion to permanent grade**

An officer who has served in a grade above captain, upon termination of the officer's assignment to the position for which that appointment was made, shall, unless appointed or assigned to another position for which a higher grade is designated, revert to the grade

and number the officer would have occupied but for serving in a grade above that of captain. In such a case, the officer shall be an extra number in that grade.

**(e) Number of officers appointed**

**(1) Overall limit**

The total number of officers serving on active duty at any one time in the grade of rear admiral (lower half) or above may not exceed four.

**(2) Limit by grade**

The number of officers serving on active duty under appointments under this section may not exceed—

- (A) one in the grade of vice admiral;
- (B) two in the grade of rear admiral; and
- (C) two in the grade of rear admiral (lower half).

**(f) Pay and allowances**

An officer appointed to a grade under this section, while serving in that grade, shall have the pay and allowances of the grade to which appointed.

**(g) Effect of appointment**

An appointment of an officer under this section—

- (1) does not vacate the permanent grade held by the officer; and
- (2) creates a vacancy on the active list.

(Pub. L. 107-372, title II, § 228, Dec. 19, 2002, 116 Stat. 3086.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 853u of this title prior to repeal by Pub. L. 107-372.

**APPOINTMENT OF COMMISSIONED OFFICERS**

Pub. L. 98-498, title III, § 320(c)(2), Oct. 19, 1984, 98 Stat. 2309, provided that: "After the date of the enactment of this Act [Oct. 19, 1984], no appointment of a commissioned officer may be made under section 2(d) or 2(f) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.)."

**§ 3029. Temporary appointments and promotions generally**

**(a) Ensign**

Temporary appointments in the grade of ensign may be made by the President alone. Each such temporary appointment terminates at the close of the next regular session of the Congress unless the Senate sooner gives its advice and consent to the appointment.

**(b) Lieutenant (junior grade)**

Officers in the permanent grade of ensign may be temporarily promoted to and appointed in the grade of lieutenant (junior grade) by the President alone whenever vacancies exist in higher grades.

**(c) Any one grade**

When determined by the Secretary to be in the best interest of the service, officers in any permanent grade may be temporarily promoted one grade by the President alone. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.

(Pub. L. 107-372, title II, § 229, Dec. 19, 2002, 116 Stat. 3087.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 853j-1 of this title prior to repeal by Pub. L. 107-372.

**§ 3030. Temporary appointment or advancement of commissioned officers in time of war or national emergency**

**(a) In general**

Officers of the Administration shall be subject in like manner and to the same extent as personnel of the Navy to all laws authorizing temporary appointment or advancement of commissioned officers in time of war or national emergency.

**(b) Limitations**

Subsection (a) of this section shall be applied subject to the following limitations:

(1) A commissioned officer in the service of a military department under section 3061 of this title may, upon the recommendation of the Secretary of the military department concerned, be temporarily promoted to a higher rank or grade.

(2) A commissioned officer in the service of the Administration may be temporarily promoted to fill vacancies in ranks and grades caused by the transfer of commissioned officers to the service and jurisdiction of a military department under section 3061 of this title.

(3) Temporary appointments may be made in all grades to which original appointments in the Administration are authorized, except that the number of officers holding temporary appointments may not exceed the number of officers transferred to a military department under section 3061 of this title.

(Pub. L. 107-372, title II, § 230, Dec. 19, 2002, 116 Stat. 3087.)

**CODIFICATION**

Provisions similar to this section are contained in section 854a-1 of this title.

**§ 3031. Pay and allowances; date of acceptance of promotion**

**(a) Acceptance and date of promotion**

An officer of the commissioned corps who is promoted to a higher grade—

(1) is deemed for all purposes to have accepted the promotion upon the date the promotion is made by the President, unless the officer expressly declines the promotion; and

(2) shall receive the pay and allowances of the higher grade from that date unless the officer is entitled under another provision of law to receive the pay and allowances of the higher grade from an earlier date.

**(b) Oath of office**

An officer who subscribed to the oath of office required by section 3331 of title 5 shall not be required to renew such oath or to take a new oath upon promotion to a higher grade, if the service of the officer after the taking of such oath is continuous.

(Pub. L. 107-372, title II, §231, Dec. 19, 2002, 116 Stat. 3087.)

#### CODIFICATION

Provisions similar to this section are contained in section 854a-2 of this title.

### § 3032. Service credit as deck officer or junior engineer for promotion purposes

For purposes of promotion, there shall be counted in addition to active commissioned service, service as deck officer or junior engineer.

(Pub. L. 107-372, title II, §232, Dec. 19, 2002, 116 Stat. 3088.)

#### CODIFICATION

Provisions similar to this section are contained in section 854a of this title.

### § 3033. Suspension during war or emergency

In time of emergency declared by the President or by the Congress, and in time of war, the President is authorized, in the President's discretion, to suspend the operation of all or any part of the provisions of law pertaining to promotion of commissioned officers of the Administration.

(Pub. L. 107-372, title II, §233, Dec. 19, 2002, 116 Stat. 3088.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853i(b) of this title prior to repeal by Pub. L. 107-372.

## SUBCHAPTER III—SEPARATION AND RETIREMENT OF OFFICERS

### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3022 of this title.

### § 3041. Involuntary retirement or separation

#### (a) Transfer of officers to retired list; separation from service

As recommended by a personnel board convened under section 3022 of this title—

(1) an officer in the permanent grade of captain or commander may be transferred to the retired list; and

(2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

#### (b) Computations

In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) of this section plus the number of officers retired for age may not exceed the whole number nearest 4 percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

#### (c) Effective date of retirements and separations

A retirement or separation under subsection (a) of this section shall take effect on the first day of the sixth month beginning after the date on which the Secretary approves the retirement or separation, except that if the officer con-

cerned requests an earlier retirement or separation date, the date shall be as determined by the Secretary.

(Pub. L. 107-372, title II, §241, Dec. 19, 2002, 116 Stat. 3088.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853g of this title prior to repeal by Pub. L. 107-372.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3042 of this title.

### § 3042. Separation pay

#### (a) Authorization of payment

An officer who is separated under section 3041(a)(2) of this title and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) of this section unless the Secretary determines that the conditions under which the officer is separated do not warrant payment of that pay.

#### (b) Amount of separation pay

##### (1) Six or more years

In the case of an officer who has completed six or more years of continuous active service immediately before that separation, the amount of separation pay to be paid to the officer under this section is 10 percent of the product of—

(A) the years of active service creditable to the officer; and

(B) 12 times the monthly basic pay to which the officer was entitled at the time of separation.

##### (2) Three to six years

In the case of an officer who has completed three or more but fewer than six years of continuous active service immediately before that separation, the amount of separation pay to be paid to the officer under this section is one-half of the amount computed under paragraph (1).

#### (c) Other conditions, requirements, and administrative provisions

The provisions of subsections (f), (g), and (h) of section 1174 of title 10 shall apply to separation pay under this section in the same manner as such provisions apply to separation pay under that section.

(Pub. L. 107-372, title II, §242, Dec. 19, 2002, 116 Stat. 3088.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853h of this title prior to repeal by Pub. L. 107-372.

### § 3043. Mandatory retirement for age

#### (a) Officers below grade of rear admiral (lower half)

Unless retired or separated earlier, each officer on the lineal list of the commissioned corps who is serving in a grade below the grade of rear

admiral (lower half) shall be retired on the first day of the month following the month in which the officer becomes 62 years of age.

**(b) Flag officers**

Notwithstanding subsection (a) of this section, the President may defer the retirement of an officer serving in a position that carries a grade above captain for such period as the President considers advisable, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 64 years of age.

(Pub. L. 107-372, title II, §243, Dec. 19, 2002, 116 Stat. 3089.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 853k of this title prior to repeal by Pub. L. 107-372.

**§ 3044. Retirement for length of service**

An officer who has completed 20 years of service, of which at least 10 years was service as a commissioned officer, may at any time thereafter, upon application by such officer and in the discretion of the President, be placed on the retired list.

(Pub. L. 107-372, title II, §244, Dec. 19, 2002, 116 Stat. 3089.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 853l of this title prior to repeal by Pub. L. 107-372.

**§ 3045. Computation of retired pay**

**(a) Officers first becoming members before September 8, 1980**

Each officer on the retired list who first became a member of a uniformed service before September 8, 1980, shall receive retired pay at the rate determined by multiplying—

(1) the retired pay base determined under section 1406(g) of title 10; by

(2) 2½ percent of the number of years of service that may be credited to the officer under section 1405 of such title as if the officer's service were service as a member of the Armed Forces.

The retired pay so computed may not exceed 75 percent of the retired pay base.

**(b) Officers first becoming members on or after September 8, 1980**

Each officer on the retired list who first became a member of a uniformed service on or after September 8, 1980, shall receive retired pay at the rate determined by multiplying—

(1) the retired pay base determined under section 1407 of title 10; by

(2) the retired pay multiplier determined under section 1409 of such title for the number of years of service that may be credited to the officer under section 1405 of such title as if the officer's service were service as a member of the Armed Forces.

**(c) Treatment of full and fractional parts of months in computing years of service**

**(1) In general**

In computing the number of years of service of an officer for the purposes of subsection (a) of this section—

(A) each full month of service that is in addition to the number of full years of service creditable to the officer shall be credited as 1/12 of a year; and

(B) any remaining fractional part of a month shall be disregarded.

**(2) Rounding**

Retired pay computed under this section, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(Pub. L. 107-372, title II, §245, Dec. 19, 2002, 116 Stat. 3089.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 853o of this title prior to repeal by Pub. L. 107-372.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 10 section 1406.

**§ 3046. Retired grade and retired pay**

Each officer retired pursuant to law shall be placed on the retired list with the highest grade satisfactorily held by that officer while on active duty including active duty pursuant to recall, under permanent or temporary appointment, and shall receive retired pay based on such highest grade, if—

(1) the officer's performance of duty in such highest grade has been satisfactory, as determined by the Secretary of the department or departments under whose jurisdiction the officer served; and

(2) unless retired for disability, the officer's length of service in such highest grade is no less than that required by the Secretary of officers retiring under permanent appointment in that grade.

(Pub. L. 107-372, title II, §246, Dec. 19, 2002, 116 Stat. 3090.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 853p and 857-2 of this title prior to repeal by Pub. L. 107-372.

**§ 3047. Retired rank and pay held pursuant to other laws unaffected**

Nothing in this subchapter shall prevent an officer from being placed on the retired list with the highest rank and with the highest retired pay to which the officer is entitled under any other provision of law.

(Pub. L. 107-372, title II, §247, Dec. 19, 2002, 116 Stat. 3090.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 853q of this title prior to repeal by Pub. L. 107-372.



**§ 3048. Continuation on active duty; deferral of retirement**

The provisions of subchapter IV of chapter 36 of title 10 relating to continuation on active duty and deferral of retirement shall apply to commissioned officers of the Administration.

(Pub. L. 107-372, title II, § 248, Dec. 19, 2002, 116 Stat. 3090.)

**§ 3049. Recall to active duty**

The provisions of chapter 39 of title 10 relating to recall of retired officers to active duty, including the limitations on such recalls, shall apply to commissioned officers of the Administration.

(Pub. L. 107-372, title II, § 249, Dec. 19, 2002, 116 Stat. 3090.)

**SUBCHAPTER IV—SERVICE OF OFFICERS WITH THE MILITARY DEPARTMENTS**

**§ 3061. Cooperation with and transfer to military departments**

**(a) Transfers of resources and officers during national emergency**

**(1) Transfers authorized**

The President may, whenever in the judgment of the President a sufficient national emergency exists, transfer to the service and jurisdiction of a military department such vessels, equipment, stations, and officers of the Administration as the President considers to be in the best interest of the country.

**(2) Responsibility for funding of transferred resources and officers**

After any such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which the transfer is made.

**(3) Return of transferred resources and officers**

Such transferred vessels, equipment, stations, and officers shall be returned to the Administration when the national emergency ceases, in the opinion of the President.

**(4) Rule of construction**

Nothing in this section shall be construed as transferring the Administration or any of its functions from the Department of Commerce except in time of national emergency and to the extent provided in this section.

**(b) Limitation on transfer of officers**

This section does not authorize the transfer of an officer of the Administration to a military department if the accession or retention of that officer in that military department is otherwise not authorized by law.

**(c) Status of transferred officers**

An officer of the Administration transferred under this section, shall, while under the jurisdiction of a military department, have proper military status and shall be subject to the laws, regulations, and orders for the government of the Army, Navy, or Air Force, as the case may be, insofar as the same may be applicable to per-

sons whose retention permanently in the military service of the United States is not contemplated by law.

(Pub. L. 107-372, title II, § 251, Dec. 19, 2002, 116 Stat. 3090.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 855 of this title prior to repeal by Pub. L. 107-372.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3030 of this title.

**§ 3062. Relative rank of officers when serving with Army, Navy, or Air Force**

When serving with the Army, Navy, or Air Force, an officer of the Administration shall rank with and after officers of corresponding grade in the Army, Navy, or Air Force of the same length of service in grade. Nothing in this subchapter shall be construed to affect or alter an officer's rates of pay and allowances when not assigned to military duty.

(Pub. L. 107-372, title II, § 252, Dec. 19, 2002, 116 Stat. 3091.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 856 of this title prior to repeal by Pub. L. 107-372.

**§ 3063. Rules and regulations when cooperating with military departments**

**(a) Joint regulations**

The Secretary of Defense and the Secretary of Commerce shall jointly prescribe regulations—

(1) governing the duties to be performed by the Administration in time of war; and

(2) providing for the cooperation of the Administration with the military departments in time of peace in preparation for its duties in time of war.

**(b) Approval**

Regulations under subsection (a) of this section shall not be effective unless approved by each of those Secretaries.

**(c) Communications**

Regulations under subsection (a) of this section may provide procedures for making reports and communications between a military department and the Administration.

(Pub. L. 107-372, title II, § 253, Dec. 19, 2002, 116 Stat. 3091.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 858 of this title prior to repeal by Pub. L. 107-372.

**SUBCHAPTER V—RIGHTS AND BENEFITS**

**§ 3071. Applicability of certain provisions of title 10**

**(a) Provisions made applicable to the corps**

The rules of law that apply to the Armed Forces under the following provisions of title 10, as those provisions are in effect from time to

time, apply also to the commissioned officer corps of the Administration:

- (1) Chapter 40, relating to leave.
- (2) Section 533(b), relating to constructive service.
- (3) Section 716, relating to transfers between the armed forces and to and from National Oceanic and Atmospheric Administration.
- (4) Section 1035, relating to deposits of savings.
- (5) Section 1036, relating to transportation and travel allowances for escorts for dependents of members.
- (6) Section 1052, relating to reimbursement for adoption expenses.
- (7) Section 1174a, relating to special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).
- (8) Chapter 61, relating to retirement or separation for physical disability.
- (9) Chapter 69, relating to retired grade, except sections 1370, 1375, and 1376.
- (10) Chapter 71, relating to computation of retired pay.
- (11) Chapter 73, relating to annuities based on retired or retainer pay.
- (12) Subchapter II of chapter 75, relating to death benefits.
- (13) Section 2634, relating to transportation of motor vehicles for members on permanent change of station.
- (14) Sections 2731 and 2735, relating to property loss incident to service.
- (15) Section 2771, relating to final settlement of accounts of deceased members.
- (16) Such other provisions of subtitle A of that title as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

#### (b) References

The authority vested by title 10 in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) of this section shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee.

(Pub. L. 107-372, title II, §261, Dec. 19, 2002, 116 Stat. 3091.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 857a of this title prior to repeal by Pub. L. 107-372.

### § 3072. Eligibility for veterans benefits and other rights, privileges, immunities, and benefits under certain provisions of law

#### (a) In general

Active service of officers of the Administration shall be deemed to be active military service for the purposes of all rights, privileges, immunities, and benefits under the following:

- (1) Laws administered by the Secretary of Veterans Affairs.

(2) The Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.).

(3) Section 410 of title 42, as in effect before September 1, 1950.

#### (b) Exercise of authority

In the administration of the laws and regulations referred to in subsection (a) of this section, with respect to the Administration, the authority vested in the Secretary of Defense and the Secretaries of the military departments and their respective departments shall be exercised by the Secretary of Commerce.

(Pub. L. 107-372, title II, §262, Dec. 19, 2002, 116 Stat. 3092.)

#### REFERENCES IN TEXT

The Soldiers’ and Sailors’ Civil Relief Act of 1940, referred to in subsec. (a)(2), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 857 and 857-3(a) of this title prior to repeal by Pub. L. 107-372.

### § 3073. Medical and dental care

The Secretary may provide medical and dental care, including care in private facilities, for personnel of the Administration entitled to that care by law or regulation.

(Pub. L. 107-372, title II, §263, Dec. 19, 2002, 116 Stat. 3093.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 857-3(b) of this title prior to repeal by Pub. L. 107-372.

### § 3074. Commissary privileges

#### (a) Extension of privilege

Commissioned officers, ships’ officers, and members of crews of vessels of the Administration shall be permitted to purchase commissary and quartermaster supplies as far as available from the Armed Forces at the prices charged officers and enlisted members of the Armed Forces.

#### (b) Sales of rations, stores, uniforms, and related equipment

The Secretary may purchase ration supplies for messes, stores, uniforms, accouterments, and related equipment for sale aboard ship and shore stations of the Administration to members of the uniformed services and to personnel assigned to such ships or shore stations. Sales shall be in accordance with regulations prescribed by the Secretary, and proceeds therefrom shall, as far as is practicable, fully reimburse the appropriations charged without regard to fiscal year.

#### (c) Surviving spouses’ rights

Rights extended to members of the uniformed services in this section are extended to their surviving spouses and to such others as are designated by the Secretary concerned.